

REMARKS

The Final Office Action mailed May 8, 2007, and the prior art relied upon therein have been carefully studied. The claims in the application are now claims 1-9, the withdrawn claims having been cancelled above without prejudice in favor of applicant's divisional application. Applicant's claims define novel and unobvious subject matter and should be allowed. Applicant accordingly respectfully requests favorable reconsideration, entry of the amendments presented above, and early formal and allowance.

Applicant respectfully traverses the finality of the present Office Action and requests that it be withdrawn, whereby the above amendments will be enterable as a matter of right. Paragraph 20, page 6, of the Final Action states that applicant's amendment necessitated the new rejection, but applicant strongly disagrees, and submits that the previous rejection was withdrawn because it was determined by the PTO to be unjustified. The amendments made in the Reply of February 12, 2007, were very minor and not of such a nature as to create any new issues, and there did not necessitate the new rejection. Thus, the only amendments made were changing in claim 1 the wording "substantial underpressure" to "underpressure relative to the environment"; and in claim 5 changing "substantially bulb formed" to "bell-shaped". These are clearly cosmetic changes which did not change

the scope of the claims, i.e. an "underpressure" can only be "relative to the environment"; and "bell-shaped" is simply another way of saying "substantially bulb formed".

No changes of substance were made. The last amendment did not necessitate the new rejection. Applicant requests that the finality of the last Action be withdrawn.

Acknowledgement by the PTO of the receipt of applicant's papers filed under §119 is noted.

Paragraphs 4 and 5 on page 2 of the Final Action are noted, but are wrong with regard to applicant having elected "without traverse". The Reply of May 10, 2006, to the restriction requirement, clearly states on page 8 thereof that both requirements are "traversed".

The Reply of February 12, 2007, contains neither a traversal nor a non-traversal. The top paragraph on page 12 thereof merely questions why claims 10-19 were not examined when the requirement was stated by the PTO as having been withdrawn with respect to claims 10-19. Therefore, the record is clear that applicant did **not** make any election "without traverse".

Nevertheless, as prosecution has now advanced and claims 10-19 were not examined, applicant now **accepts** the PTO holding that now deleted claims 10-19 define patentably distinct subject matter from elected claims 1-9, i.e. such claims define subject matter which is non-obvious from the elected claims.

The PTO indicates that the specification has not been checked to the extent necessary to determine the presence of all possible minor errors. Applicant will of course cooperate in correcting or approving the correction of any errors which may be discovered.

Claims 1-3 and 7 have been rejected as anticipated by Gu et al USP 5,971,942 (Gu), previously cited but not previously applied. This rejection is respectfully traversed.

Gu discloses an intestinal fluid sampler comprising a shell or body 10 defining a cavity 40 maintained at an underpressure, the shell or hollow body 10 having an opening 20 therein which is externally sealed by a seal patch 30 formed of a material which will disintegrate or be dissolved in the GI tract fluid.

Contrary to what the rejection states, Gu does not disclose any separate blocking member, the edges of the opening 20 formed in the wall of the hollow body 10 being part of the wall itself and not a separate blocking member as claimed. Even if the opening-defining edges were (improperly) held to be a blocking member, same would not be "disposed **in** the inner chamber (5) adjacent to the inlet opening (18) in the capsule wall" as called for in applicant's claims. To further emphasize this point, applicant proposes to change the word "in" to "within" in the proposed amendment to claim 1 above, the difference in terminology being merely one of emphasis. The edges of the wall

of Gu defining the opening 20 cannot be said to be disposed either in or within the inner chamber adjacent to the inlet opening 20.

Applicant has also proposed above to further amend claim 1 to include the feature from claim 4 that the capsule comprises two members, a cap member and a body member, these being permanently joined to each other. This additional feature is clearly not disclosed by Gu, and claim 4 has not been rejected as anticipated by Gu.

Claim 2 incorporates the subject matter of claim 1 and defines over Gu for the reasons pointed out above. Moreover, the dependent portion of claim 2 calls for the seal to be a plug member of a material that is dissolved following contact with the body substance, and this subject matter also is not disclosed by Gu. It is true that Figs. 3A and 3B of Gu do show a plug as opposed to the external seal shown in Figs. 1, 2 and 4 of Gu, but this plug of Gu is "made of a magnetic material" and not a dissolvable material, the magnetic plug being removable "remotely with a magnetic field instead of dissolution or direct mechanical means."

Claim 3 is patentable because it incorporates the subject matter of claim 1. Moreover, the dependent portion of claim 3 is not anticipated by Gu. Thus, Gu does not show any blocking membrane which in its flow preventing configuration

"sealingly bears on the inside of the capsule wall" as called for in claim 3.

Claim 7 is patentable because it incorporates the subject matter of claim 2 which in turn incorporates the subject matter of claim 1, and thus defines over Gu for the reasons pointed out above. In addition, the dependent portion of claim 7 calls for the plug member to have two or more layers. In contrast, the seal patches of Figs. 1, 2 and 4 of Gu are not plugs.

Withdrawal of the rejection under §102 based on Gu is in order and is respectfully requested.

Claims 4-6, 8 and 9 have been rejected under §103 as obvious from Gu in view of previously applied Pawelec. This rejection is respectfully traversed.

Respectfully, the rejection makes no sense to applicant, as there is no apparent reason for abstracting anything from Pawelec to include in Gu. Thus, because the fluid sampler of Gu effects sealing (see Fig. 2D) without a blocking member, i.e. by the edges defining the opening simply returning to the closed position due to memory of the material from which the shell or body 10 is made, there would be no reason for forming the body in two pieces, i.e. a cap member and a body member. That would simply make the Gu device more complex and more expensive.

Indeed, Gu and Pawelec are antithetical to one another, the former being extremely simple and the latter being very complex as pointed out in applicant's Reply of February 12, 2007, the Remarks regarding Pawelec being respectfully repeated by reference. The rejection states in paragraph 17 that the reason for the proposed combination would be "for the purpose of increasing the efficiency of a physiologically-triggered device to automatically obtain and secure samples for diagnosis", but there is no evidence that any such reason (an increase in efficiency) exists in reality. Respectfully, such a supposed increase in efficiency is purely speculative, and not based on any disclosure in the prior art, or any other evidence.

The present invention provides a number of advantages over both Gu and Pawelec. Those advantages over Pawelec were pointed out in the preceding reply, and they are respectfully repeated by reference.

With regard to Gu, the PTO position that the edges of the wall define the blocking member requires that the wall have memory, and also be elastic or flexible. Thus, unlike the present invention, if pressure is applied to the wall 10 of Gu, during use the function of the fluid sampler of Gu would be compromised. Because the present invention has a blocking member which is disposed inside the inner chamber, there is no need for a flexible outer wall in the present invention, whereby the outer wall is relatively rigid. Applicant's claimed embodiment is a

safer and more secure device relative to that of Gu which relies on an elastic cell-sealing membrane, and is far simpler, less expensive and more reliable than the complex device of Pawelec.

Withdrawal of the rejection is in order and is respectfully requested.

The prior art document made of record and not relied upon by the PTO has been noted, along with the implication that such document is deemed by the PTO to be insufficiently material to warrant its application against any of applicant's claims.

Applicant believes and submits that all issues raised in the Official Action have been addressed above in a manner that should lead to patentability of the present application. Withdrawal of the finality of the last action, favorable consideration, entry of the amendments above, and early formal allowance are respectfully requested.

Respectfully submitted,

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